


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SIOUX FALLS DIVISION

FILED
NOV 03 2009

CLERK

SOUTH DAKOTA BOARD OF REGENTS
as governing board for SOUTH DAKOTA
AGRICULTURAL EXPERIMENT
STATION and SOUTH DAKOTA STATE
UNIVERSITY,

Plaintiff,

CASE NO. 09-4098

vs.

BANNWARTH FARMS LLC
DUANE BANNWARTH, TOM
BANNWARTH and
JOHN DOES 1-50,

Defendants.

CONSENT JUDGMENT AND INJUNCTION

Plaintiff South Dakota Board of Regents, as governing board for the South Dakota Agricultural Experiment Station and South Dakota State University (collectively, "SDSU") brought this action for damages and injunctive relief against defendants Bannwarth Farms LLC, Duane Bannwarth, and Tom Bannwarth ("Defendants") and Defendant John Does 1-50 for unauthorized use of Plaintiff's proprietary wheat varieties in violation of Plaintiff's rights under the Plant Variety Protection Act, 7 U.S.C. § 2481 *et seq.* (hereinafter "PVPA").

IT IS HEREBY STIPULATED AND AGREED on this 5 day of ^{October}~~September~~ 2009, by and between SDSU and Defendants, collectively referred to as the "Parties," that:

1. The Parties stipulate and agree that this Court is the proper court of venue and jurisdiction for the action alleged in SDSU's *Complaint* and other pleadings pursuant to, *inter alia*, 28 U.S.C. §§ 1331, 1338, 1367, and 1391;

2. The Parties have read and reviewed the stipulations and terms of this *Consent Judgment and Injunction* and understand the nature, terms, and contents of this *Consent Judgment and Injunction*;
3. Defendants stipulate and agree that SDSU owns or licenses valid and enforceable intellectual property rights to the wheat seed protected by virtue of various U.S. Plant Variety Protection Act Certificates, including the variety known as BRIGGS;
4. Defendants stipulate and agree that he has infringed one of SDSU's certificates of plant variety protection and Defendants expressly agree and acknowledge that 11 U.S.C. § 523(a)(6) renders the Judgment Amount nondischargeable in bankruptcy and agrees that all requirements set forth therein are expressly applicable in the instant action;
5. Defendants stipulate and agree that his actions as set forth in SDSU's *Complaint* have caused irreparable harm to SDSU; and
6. Defendants accept the following terms and conditions for purposes of settlement of this case and consents to the entry of a final Judgment according to such terms and conditions stated below, and Defendants agree to be subject to the continuing jurisdiction of the United States District Court in which the lawsuit is situated to enforce the terms of this *Consent Judgment and Injunction*. Accordingly, it is agreed by the Parties that a final Judgment should be entered in this cause adopting the following terms.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
THAT this *Consent Judgment and Injunction* shall be entered and Defendants shall immediately inform all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants on the followings terms and conditions of this *Consent Judgment and Injunction*:

INJUNCTION

7. **Prohibited Activities under the Plant Variety Protection Act.** Defendants and all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants are hereby enjoined and permanently restrained from selling, marketing, delivering, shipping, consigning, exchanging, or transferring title or possession of all varieties owned or licensed by SDSU without authorization. This does not restrict use for ordinary grain channels.

8. **Disposition of Infringing Seed.** Within twenty (20) days of the entry of this *Consent Judgment and Injunction*, Defendants shall cause to be destroyed or otherwise legally disposed of any and all infringing seed under his control or the control of his successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants. Defendants shall provide SDSU's counsel with copies of appropriate documentation, such as bills of sale, bills of lading, weigh tickets, or other information reasonable and necessary, to establish that he has complied with this obligation and destroyed, sold, or otherwise legally disposed of all infringing seed within Defendants's control or possession.
9. **Right of Inspection.** SDSU, by and through an agent, representative, and/or attorneys, shall have the right to inspect the business and farming records and physical premises of Defendants, including fields, buildings, storage facilities, and other locations under the ownership or control of Defendants, his successors, assigns, officers, agents, employees, representatives, and/or all other entities or persons in active concert or participation with Defendants. The right of inspection shall include the opportunity to take representative samples of crops, stored seed, or bagged seed. The right of inspection shall also include the right to make undercover purchases. The right of inspection shall expire five (5) years following entry of this *Consent Judgment and Injunction*.

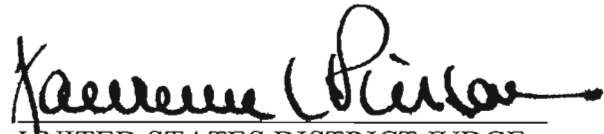
AWARD OF DAMAGES TO PLAINTIFFS

10. **Award to Plaintiff.** Defendants shall be jointly and severally liable to the plaintiffs for damages in the amount of thirty two thousand five hundred dollars (\$32,500.00) for the purposes of rectifying the harm to SDSU caused by Defendants.
11. **Defendants' Costs.** Each party shall bear their own attorneys' fees and costs.

RELEASE OF CLAIMS

12. **Release of Claims and Waiver of Trial by Defendants.** The Parties release and relinquish all rights, benefits, causes of action, and claims, if any, arising out of or pertaining to Defendants' unauthorized sale and use of SDSU's wheat varieties, including release of SDSU's authorized agents or attorneys, releasing all such claims occurring prior to the execution of this *Consent Judgment and Injunction* and which arise out of or relate to the matters which form the basis of SDSU's *Complaint*. Further, Defendants waive his right to trial and appeal of all rights, benefits, causes of action, and claims arising out of or relating to the subject matter forming the basis of SDSU's *Complaint*.


IT IS SO ORDERED.

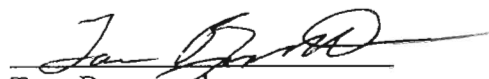

UNITED STATES DISTRICT JUDGE
November 3, 2009

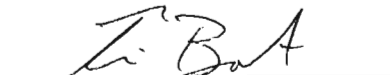
Dated this 5th day of ^{October} ~~September~~, 2009.


AGREED TO AND ACCEPTED:



Bannwarth Farms LLC



Duane Bannwarth


Tom Bannwarth


Mr. Timothy Bottum
Counsel to Defendants


South Dakota Board of Regents
by Its Authorized Representative


SDSU Michael P. Reger
by Its Authorized Representative 10/16/09
10/16/09

Date

Richard J. Helsper 10-13-09
Counsel to SDSU and SDBoR